



# CHAPTER II

## WISCONSIN STATE CIVIL SERVICE 1905-1929

Wisconsin was only the third state to implement a civil service system, following the lead of New York, Massachusetts, and the federal government. The introduction of a civil service system in Wisconsin, as in other states and the federal government, marked a radical change in state governance. With the passage of the state's first civil service law in 1905, the state moved from a patronage or "spoils" system of government employment, in which state employees were often selected based on political affiliation, to a merit system of hiring based on open and competitive examination.

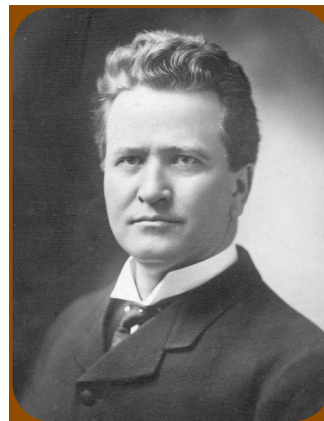
As in the federal government, the initiation of a civil service system brought the end to party "machine" governance in Wisconsin and marked a highpoint in the progressive reforms of the era.

### FIGHTING BOB LA FOLLETTE, PATRONAGE, AND PROGRESSIVISM

Robert Marion La Follette was born on a farm in Primrose, Wisconsin in 1855. He graduated from the University of Wisconsin in 1879, obtained a law degree, and eventually become the first governor of the state to have been a UW graduate.<sup>1</sup> Prior to his campaigns for the governorship he served three terms in Congress. He ran for governor unsuccessfully in 1896 and again in 1898, losing the Republican nomination both times to Edward Scofield, a prominent and wealthy lumberman supported by the more conservative and wealthy Stalwart branch of the party.<sup>2</sup>

La Follette was elected Governor of Wisconsin in 1900, succeeding Scofield.<sup>3</sup> Prior to his nomination and election, La Follette had unified many different factions

within the Republican Party. The Progressives, the reform side of the Republican Party, were a loose coalition of "Old Populists," idealistic crusaders,



Robert M. La Follette, Wisconsin Governor 1900 – 1906 SHS Photo

University intellectuals, Scandinavian and farming groups, urban workers, professional officeholders, ambitious youngsters, and a disgruntled multimillionaire.<sup>4</sup> La Follette was opposed within the Republican Party by the Stalwarts, wealthy old-line lumber and railroad interests. Scofield continued to be one of La Follette's chief Stalwart opponents.

The Republican unity ended soon after La Follette's election. Despite Republican majorities in both the assembly and senate, he failed to pass his two major pieces of legislation, the direct primary system and the ad valorem taxation of railroads.

### THE "REFORM BOSS"

Governor La Follette proved himself to be not only a reformer, but a pragmatic politician as well. Beginning with his reelection in 1902,<sup>5</sup> he built a machine of political alliances and patronage that was as strong and disciplined as any of his predecessors.

La Follette's second term was more successful than his first. He kept his opposition under control. His direct primary bill was passed and approved by a statewide

referendum. The railroad tax bill was passed and signed into law.

He did not hesitate to use machine patronage to strengthen his political base. La Follette biographer Robert S. Maxwell writes:

All political machines are said to run on patronage, and La Follette's organization was no exception. A large number of party workers found their way into profitable jobs in the state administration. Clerks, oil inspectors, and factory inspectors performed dual service during the campaigns season. Even the lists of temporary personnel, such as State Fair guards and ticket sellers, were culled to provide the greatest possible number of jobs for progressive workers.

But by far the largest single group of part-time political workers for the progressives were the state game wardens....

At election time the deputy wardens distributed pamphlets, posters, and sample ballots. In districts where close contests were expected several of them would work as a team, calling on party members, getting out the vote, and even providing vehicles to take voters to the polls....

The report of 1904...listed eighty-two inspectors of illuminating oils by name with salaries and per diem expenses of over \$20,000. No expense of this type was listed for 1900.<sup>6</sup>

In 1904, La Follette was elected governor for the third time. With his political machine in place and surrounded by a cadre of Progressive supporters, Governor La Follette, now a "reform boss,"<sup>7</sup> was in position to push through his reform agenda.

### THE WISCONSIN IDEA

Governor La Follette, as a University of Wisconsin alumnus, believed in what would later be called the "Wisconsin Idea." The Wisconsin Idea, loosely stated, is that the university should work for the good of the state and the state should support the university.

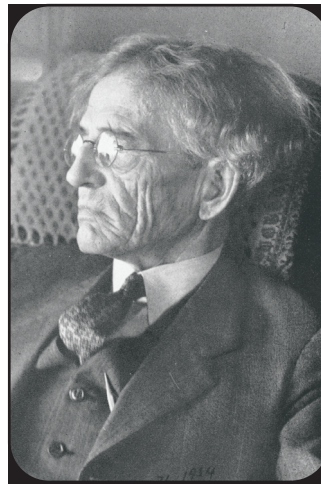
Governor La Follette organized the Saturday Lunch Club, weekly discussions of political, legislative and

intellectual issues. The club consisted of prominent intellectuals, including Charles Van Hise, University of Wisconsin president and a former La Follette classmate; John R. Commons, the economics professor who was to write the civil service law in 1905; Richard T. Ely, another economics professor; and Edward A. Ross, a prominent social scientist.<sup>8</sup> The discussions helped to develop the progressive legislation that won the praise of Theodore Roosevelt:

Thanks to the movement for genuinely democratic popular government which Senator La Follette led to overwhelming victory in Wisconsin, that state has become literally a laboratory for wise experimental legislation aiming to secure the social and political betterment of the people as a whole.

Nothing is easier than to demand on the stump, or in essays and editorials, the abolition of injustice and the securing to each man of his rights. But actually to

accomplish practical and effective work along the line of such utterances is so hard that the average public man, and average public writer, have not even attempted it.<sup>9</sup>



*John R. Commons, author of the Civil Service Act of 1905 and other Progressive era legislation.*

Wisconsin's civil service act was the direct product of this dynamic intermingling of university intellectuals and public servants: early in his second term, Governor La Follette asked Professor Commons to draft a civil service law.

### THE CIVIL SERVICE ACT OF 1905

State Representative Ernest Warner, who later admitted to having little confidence of its passage, introduced the Civil Service Reform Act drafted by Professor Commons in the state assembly on January 2, 1905.<sup>10</sup> The Act proposed a system of merit-based hiring.

In an address to the legislature on the bill, Governor La Follette said:

The fundamental idea of democracy is that all men are equal before the law. What proposition is plainer than that every citizen should have an equal opportunity to aspire to serve the public, and that when he does so aspire the only test applied should be that of merit. Any other test is undemocratic. To say that the test of party service should be applied is just as undemocratic as it would be to apply the test of birth or wealth or religion.<sup>11</sup>

The civil service law was largely modeled on the New York, Massachusetts, and federal laws. It required that all positions covered under the act should be filled by competitive examination, and that all current employees in the classified service should pass a non-competitive examination within six months to retain their positions. The Act provided that the examinations should be held simultaneously “at a convenient point in each of the assembly districts,” which resulted in examinations being given simultaneously in 111 test sites statewide. The bill also defined “the promise by [an officeholder or candidate] of political appointment in return for aid in securing political preferment” as bribery.

The Act passed the legislature and was signed into law by Governor La Follette on June 17, 1905. The legislature’s surprising enthusiasm for civil service—it passed both houses with a two-thirds majority—was partly due to the Act’s broad coverage.

The Act set up two categories of employees: unclassified, which “included elected officers, officers appointed by the governor, most employees of the University, teachers in the public schools, librarians of publicly supported libraries, heads of state institutions, and persons appointed by name in statutes. All others were in the classified service.”<sup>12</sup> Employees in the classified service were deemed covered under the act.

One early state roster showed 960 employees in the classified service and 600 in the unclassified service. This was far broader than the federal civil service during its early days, when less than ten percent of federal employees were classified.

Relatively few incumbent employees were exempted from the non-competitive examination requirement. Employees of “the state charitable, reformatory and penal institutions” were not required to take examina-

tions, because the institutions had been regarded as mainly patronage-free and merit-based prior to passage of the legislation.

Likewise, the law provided few exemptions for Governor La Follette’s political appointees. The law effectively dismantled his own political machine. Indeed, in the following year, the legislature extended the civil service merit system to its own legislative employees.

### THE FIRST CIVIL SERVICE COMMISSIONERS

The Act created a Civil Service Commission made up of three appointees. The first three commissioners were Samuel E. Sparling, Madison; Thomas J. Cunningham, former Secretary of State, Chippewa Falls; and Otto Gaffron, Plymouth. They served without pay. The Commission was supported by a salaried staff of three:

That staff consisted of a secretary and chief examiner at a salary of \$2500 per year, a stenographer at \$720 per year and a chief clerk.... The original duties of the Commission were (1) to prescribe and enforce rules and regulations for carrying the act into effect; (2) to keep minutes of its own proceedings and records of official actions; (3) make investigations of all matters touching the enforcement and provisions of the civil service law; (4) to issue subpoenas for its investigations, if necessary; and (5) to make a biennial report of its actions.<sup>13</sup>

In the early years, the primary activity of the Civil Service Commission was to rule on requests for exemption from the Act. Many department heads appeared before the Commission to argue that a particular position should not be in the classified service and therefore exempt from its hiring rules. Exemptions were infrequently granted, and the great majority of positions remained in the classified service.

### REMOVALS FOR CAUSE

The main purpose of the original civil service act was to regulate the appointment of state employees. It touched on removals from service only tangentially, requiring that removals be for “just cause” and forbidding removals for religious or political reasons. But the

law had no provisions for review of removals, except those allegedly done for political or religious reasons, and it specifically took a hands-off approach to removals, leaving them up to the appointing authority. The Act also left the remedy for unjust removal to the courts:

This weakness of the commission became obvious in several subsequent cases where an opinion of the attorney general said the commission could not "sit as a judicial tribunal to determine disputed questions of fact as to the discharge or resignation of classified state employes. 'The purpose of the civil service law is to provide for the appointment of state employes according to merit and fitness and to prevent their appointment because of political or religious considerations.' (1908 Opinions of the Attorney General 203)."<sup>14</sup> This was reinforced by a state Supreme Court case, *Wagner v. Dahl*, which said that not even the courts had jurisdiction over dismissals. "In short the 'just cause' which was to be the sole grounds for dismissal, only had to be 'just' in the mind of the dismitter."<sup>15</sup>

However, a subsequent Wisconsin Supreme Court decision, *Ekern v. McGovern* (1913), strengthened the civil service concept of dismissal for just cause. Herman Ekern was an insurance commissioner fired by Governor Francis McGovern for political reasons. McGovern claimed an absolute right to discharge anyone in his employ and that the commission could not interfere. The Supreme Court sided with Ekern, establishing the property right of an employee to his job, and requiring the state to observe due process protections in discharge cases.<sup>16</sup>

### *Recollections of a State Employee*

*I started in 1955 in the School of Nursing, typing and all that. Nothing much. I was just an ordinary person, took a street car to work. That's a long, long time ago. I always loved to work, typing. I would like to type again. I like to keep busy.*

—Helene Hozeny

## SCIENTIFIC MANAGEMENT

By 1918, the Civil Service Commission embraced and proselytized scientific management, a popular theory of the day that attempted to apply scientific principles to business management. In a publication entitled "Your Business, The Government of Wisconsin, How It Handles its Employment Problems," the Commission stated that "the main part of scientific employment begins after the act of hiring has been completed."<sup>17</sup> It asserted that:

### The application of scientific employment principles

1. Reduces employment turnovers (changes).
2. Brings into the organization a higher type of employee.
3. Makes for a more business-like procedure.
4. Results in a higher type of service.<sup>18</sup>

The publication went on to explain the value of job analysis, position descriptions, salary schedules that pay similarly for similar work, and examinations based on job duties.

The Commission emulated private manufacturers both in its scientific approach to the analysis of work, and also in its emphasis on providing substantial and ongoing training for employees. The first training course offered under the Commission's authority was "Effective Correspondence" for stenographers. By 1921, courses were offered in such varied topics as heat, refrigeration, criminology and penology, steam boilers, public speaking, practical sociology, freehand lettering, and many others.<sup>19</sup>

Many of the original policies and procedures relating to civil service examinations are still observed today. For example, the Commission required that "all examinations...shall be practical in character and shall relate to those matters which will fairly test...the duties of the office." This requirement lives on in the present-day requirement that questions and processes used to test job applicants be job related. Examinations were "free and open" to all citizens, as they are today; exam materials were carefully guarded, as is still the case today; and information about exams or interpretations of questions was given to one applicant only if it was available to all applicants. At the end of exam sessions, proctors collected all materials including "scratch papers and blotters," a practice still followed today at the end of proctored examinations. The only public



information about applicants was the list of those who passed an exam; the actual examinations and scores were available only to the applicant. These practices continue to be observed. Likewise, as is the case today, examinations were blind-scored so scorers did not know the identity of applicants. Laborer positions required only an application form to be filled out, with no examination, similar to the recruitment process currently used for certain positions. Veterans of the Civil War who passed the examination were to “be given a reasonable preference,”<sup>20</sup> a precursor to today’s system of giving additional points to veterans who compete for state jobs.

Certain features of the initial hiring system have become obsolete, however. The original system observed the “rule of three,” under which a certified list of only the three top-scoring applicants was provided to the hiring authority for interviewing and selection. No classified employee could be placed on the payroll unless he or she had been so certified by the Commission.

The Act created a remarkably comprehensive hiring system, many aspects of which have survived the test of time. However, the system was not without its detractors.

### CHALLENGES TO THE CIVIL SERVICE SYSTEM

Two important challenges in 1911 sustained and enhanced the authority of the civil service system. Ironically, the first challenge was initiated by the author of the Act, John R. Commons. In 1911, Commons wrote legislation creating the new Industrial Commission, and sought to have Industrial Commission employees exempted from the civil service act. His concern was that many of these employees would work as mediators and conciliators between labor and industry and must have the confidence of both groups. The Civil Service Commission kept Industrial Commission employees in the classified service, subject to testing, but added an oral examination requirement to their hiring process. The Commission’s actions eventually won over even Professor Commons, who later stated:

As I look back over my thirty years in Wisconsin and recall the many attempts, including my own in 1911, to emasculate the civil service law, I conclude that the

greatest service La Follette rendered to the people of the state was that civil service law of 1905. Without that law... his own administrative commissions on taxation and railway regulation would soon have broken down. The state, in thirty years, has switched from Progressives to Conservatives and back to Progressives and then to Democrats, and these shifts have always brought open or covert attacks on the civil service law. Without the civil service law, none of the later so-called ‘progressive’ laws...could have been enacted.<sup>21</sup>

The second major challenge not only would have overturned civil service, but would have radically changed the course of administrative law in Wisconsin. In 1911, Attorney General Levi Bancroft sought to have the positions in his office exempted from the civil service. When his request for exemption was denied, Bancroft and Secretary of State James A. Frear pursued a strategy to block the work of the Civil Service Commission.<sup>22</sup>

General Bancroft devised a legal argument that commissions were an unconstitutional usurpation of the powers of the legislature. He wrote to Secretary of State Frear: “[A]fter investigation and careful consideration, doubts of so serious a character are entertained as to the constitutionality of the civil service law, that I am obliged to advise you to refuse audit to all bills and future claims that may be presented . . . including the salaries of the members of the commission, until the validity of this act has been affirmed by the courts.”<sup>23</sup> Frear, in turn, refused to audit the Commission’s accounts, thereby blocking the Commission’s ability to pay its expenses, including the salaries of its members.

With backing from the Civil Service Reform League led by attorney Glenway Maxon from Milwaukee, the Commission took the case to the Wisconsin Supreme Court.<sup>24</sup>

The case directly involved the Civil Service Commission, but had implications for the tax commission, railroad commission and others. The Attorney General argued that such commissions “constituted an impermissible delegation of legislative powers.”<sup>25</sup>

However, the Wisconsin Supreme Court found the civil service act and the commission it created to be constitutional. The decision, *State ex rel. Buell v. Frear* (1911), not only saved the fledgling civil service act

from early extinction, but established the legal basis for administrative rulemaking by commissions.

In 1925, 20 years after the Civil Service Commission was created, Governor John James Blaine gave the Commission the authority to develop classifications and establish pay schedules. A. E. Garey, chief examiner of the Civil Service Commission, drafted major updates to the law in 1929, discussed in the next chapter.<sup>26</sup>

Although the original civil service act created a remarkably comprehensive hiring system, its scope was limited almost entirely to the hiring process. While the Commission advocated for scientific management, listed classifications and salaries, and encouraged training, the original act did not grant it the authority to create class specification descriptions or establish pay schedules. The creation of a comprehensive personnel system was yet to come.

—Dean Paynter

### TIMELINE OF WISCONSIN CIVIL SERVICE • 1905–1929

#### 1905

Wisconsin's first state civil service law was enacted on June 17, 1905, making Wisconsin the third state to establish a civil service system. The law created a three-member Civil Service Commission.

#### 1911

The constitutionality of the civil service act and commission were determined to be constitutional by the Wisconsin Supreme Court in *State ex rel. Buell v. Frear*.

#### 1925

The Civil Service Commission was authorized to develop a statewide classification and compensation plan for classified state employees.

#### 1929

Governor Walter Kohler, Sr. consolidated all civil service into the Bureau of Personnel under the direction of a three-member personnel board. All employees except department heads became classified.